

September 16, 2008

TO: ALL STATE AGENCIES, SCHOOL DISTRICTS, MUNICIPALITIES, VOLUNTEER
FIRE COMPANIES AND POLITICAL SUBDIVISIONS

FROM: ROXANN M. PARKER
STATE CONTRACT PROCUREMENT OFFICER II
(302) 857-4555

SUBJECT: **AWARD NOTICE #2 – Effective October 16, 2009**
CONTRACT NO. GSS-MU-08-550-15-RP
ULTRA LOW SULFUR DIESEL

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KEY CONTRACT INFORMATION**

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KEY CONTRACT INFORMATION

1. MANDATORY USE CONTRACT:

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REF: Title 29, Chapter 6911(d) Delaware Code. Every state department and agency within the Executive Branch and Judicial Branch of the state government shall procure all material, equipment and nonprofessional services through the statewide contracts administered by Government Support Services, Office of Management and Budget. Delaware State University, Delaware Technical and Community College, the operations funded by Public School Districts, Delaware Transit Corporation, Department of Elections, the Legislative Branch and the Board of Pension Trustees and their consultants are specifically exempted from the requirements of this subsection.

2. CONTRACT PERIOD:

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Each vendor's contract shall be valid for one (1) year period from October 16, 2008 through October 15, 2009. Each contract may be renewed for two (2) additional one (1) year periods through negotiation between the contractor and Government Support Services. Negotiation must be initiated no later than ninety (90) days prior to the termination of the current agreement.

This contract has been extended for an additional year, through October 15, 2010, under the same terms, conditions and pricing.

3. VENDORS:

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CATO INC.
PO Box 1030
Salisbury, MD 21803-1030
Contact: Pete Phoebus
Phone: 410-546-1215
Fax: 410-546-0757
Federal EI#: 52-0733363
Email: pete@catoinc.com

ISOBUNKERS, LLC
2 New Road Suite 311
Aston, PA 19014
Contact: Linda Cristinziano
Phone: 610-361-8000
Fax: 610-361-8924
Federal EI#: 54-1905248
Email: Cristinziano@acenergy.biz

CARL KING DIVISION OF GRIFFITH ENERGY SERVICES INC.
1400 E. Lebanon Rd.
Dover, DE 19901
Contact: Mary Lerch
Phone: 302-697-3251
Fax: 302-697-9148
Federal EI#: 52-2267334
Email: MLERCH@GRIFFITHOIL.COM

4. **SHIPPING TERMS:**

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As Required.

5. **DELIVERY AND PICKUP:**

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As Required.

6. **PRICING:**

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Price shall be **net** per gallon F.O.B. agency storage tanks.

NEW CASTLE COUNTY		
<i>Tank "A" 5,000 Gallons & Up</i>		
Vendor	Price Structure	ULSD
Isobunkers	Charge/Gallon	.0375
<i>Tank "B" 2,000 – 4,999 Gallons</i>		
Vendor	Price Structure	ULSD
Carl King	Charge/Gallon	.1198
<i>Tank "C" 1,999 Gallons & Smaller</i>		
Vendor	Price Structure	ULSD
Carl King	Charge/Gallon	.1875
KENT COUNTY		
<i>Tank "A" 5,000 Gallons & Up</i>		
Vendor	Price Structure	ULSD
Cato	Charge/Gallon	.0805
<i>Tank "B" 2,000 – 4,999 Gallons</i>		
Vendor	Price Structure	ULSD
Carl King	Charge/Gallon	.1878
<i>Tank "C" 1,999 Gallons & Smaller</i>		
Vendor	Price Structure	ULSD
Carl King	Charge/Gallon	.3045
SUSSEX COUNTY		
<i>Tank "A" 5,000 Gallons & Up</i>		
Vendor	Price Structure	ULSD
Cato	Charge/Gallon	.08503
<i>Tank "B" 2,000 – 4,999 Gallons</i>		
Vendor	Price Structure	ULSD
Carl King	Charge/Gallon	.1946
<i>Tank "C" 1,999 Gallons & Smaller</i>		
Vendor	Price Structure	ULSD
Carl King	Charge/Gallon	.2515

6. **PRICING (Continued):**

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A. **Floating Price:**

Ultra Low Sulfur Diesel:

Prices invoiced for the Ultra Low Sulfur Diesel fuel shall be on a per gallon basis. The price shall correspond to the daily closing **UNBRANDED RACK AVG** posting for **ULSD** for the Philadelphia Harbor under the "OPIS Gross No. 2 Distillate Prices" as published in the OPIS.

Added to the daily index shall be the delivery charge per gallon for each particular zone. **The delivery charge shall remain firm for the duration of the contract.**

After award, Government Support Services reserves the right to switch to fixed-price by mutual agreement.

The invoiced price shall be the price in effect on the date of delivery. In the event that a delivery is late at the fault of the vendor, the ordering agency at its option may request that the invoice reflect the daily index price for the promised delivery date rather than the actual delivery date had the index gone up during that time period.

NOTE: If delivery is made on a weekend, and the weekend is a holiday, the price per gallon shall be based on the previous day.

Your invoiced price **SHALL** be exclusive of all Federal and State taxes, with the exception of the Following:

Delaware Hazardous Substance Clean-Up Tax – This tax shall be billed as a separate line item on all invoices. The current rate is (.009). This tax is on the total dollar amount of the invoice, not on the per gallon price (.009 X amount of invoice).

The Federal Leaking Underground Storage Tank Tax – This tax shall be billed as a separate line item on all invoices. The current rate is (.0010). This tax is on the per gallon price. ~~This tax only applies, if you have an underground storage tank.~~ There are no exemptions from LUST tax except for exports. *Public Law 109-58; Sec.1362(b).*

The National Oilheat Research Alliance (NORA) Tax. The fee is only due on fuel used for oil heat that is defined in the law as being used for non industrial commercial or residential space or hot water heating. The fee is due on sales to consumers who use the fuel to heat space, whether by forced air or boilers, or water. The tax is on the per gallon price. The tax shall be billed as a separate line item on all invoices. The current rate is \$.002 (2/10 of a cent or twenty points). (.002 x per gal. price)

B. **Fixed Price:**

Government Support Services shall consider the option of awarding the contract based on a Fixed Price. Delivery charges for each particular zone shall be added. Delivery charges shall remain firm for the duration of the contract.

6. PRICING (Continued):

The conditions by which a fixed price contract can be entered into must be clearly stated in your proposal. Failure to offer a fixed price alternative will not preclude your bid based on a daily index from being considered. However, if Government Support Services decides to enter into a fixed price contract, your bid would then be considered to be Non-Responsive.

C. Delivery Price:

The delivery prices quoted regardless of quantity and method shall be on a per gallon basis and will include delivery to the locations on pages 31 through 41 of the ITB and shall remain firm for the duration of the contract. It should be understood that there might be tanks to be serviced which do not appear on the list. The State reserves the right to add or delete locations as deemed necessary.

It is the contractor(s) responsibility to familiarize themselves with all the locations in their respective contracts. The contractor(s) will be required to have the proper personnel/equipment, to service the locations they were awarded.

7. MOST-FAVORED CUSTOMER:

The contractor shall not offer to others prices lower than those provided in the contract, or if lower prices are offered they must also apply to the subject contract.

ADDITIONAL TERMS AND CONDITIONS

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8. PRICE ADJUSTMENT:

If agreement is reached to extend this contract for the second, optional year, the Division of Government Support Services shall have the option of offering a determined price adjustment and shall not exceed the current Philadelphia All Urban Consumers Price Index (CPI-U), U.S. City Average. If the CPI-U is used, any increase/decrease shall reflect the change during the previous published twelve (12) month period at the time of renegotiation.

9. BILLING:

The successful vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.

10. PAYMENT:

The agencies or school districts involved will authorize and process for payment each invoice within thirty (30) days after the date of receipt. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

ISObunkers has Assigned their portion of the contract to Wachovia Bank, N.A.. Payments from entities associated with this portion of the contract shall be made to Wachovia Bank, N.A. PO Box 759103 Baltimore, MD 21275.

11. PRODUCT SUBSTITUTION:

The agencies or school districts All items delivered during the life of the contract shall be of the same type and manufacture as specified or accepted as part of the bid proposal unless specific approval is given by Government Support Services to do otherwise. However, awarded vendors are highly encouraged to offer any like substitute product (s); either generic or brand name, at any time during the subsequent contract term, especially if an opportunity for cost savings to the state exists. In such cases, the state may require the submission of written specifications and/or product samples for evaluation prior to any approvals being granted.

12. ORDERING PROCEDURE:

Successful contractors are required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, fax or computer on-line systems. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

13. HOLD HARMLESS:

The contractor agrees that it shall indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the contractor, its employees, and invitees on or about the premises and which arise out of the contractor's performance, or failure to perform as specified in the Agreement.

14. NON-PERFORMANCE:

In the event the contractor does not fulfill its obligations under the terms and conditions of this contract, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the contractor. Under no circumstances shall monies be due the contractor in the event open market products can be obtained below contract cost. Any monies charged to the contractor may be deducted from an open invoice.

15. FORCE MAJEURE:

Neither the contractor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

16. AGENCY'S RESPONSIBILITIES:

The Agency shall:

- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Contractor to the Agency and render to the Contractor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Contractor.
- b. Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.

17. INVOICES

The successful vendor is required to break out the invoice as follows: price per gallon, delivery charge, applicable taxes (see Page 3, item #6 Pricing) and total price.

Additional information that is required to be on the invoice is as follows:

1. Name of Supplier
2. A statement that the oil complies with the specifications for Diesel Fuel as defined by ASTM D396 AND ASTM D975.
3. Percent of sulfur in Fuel as determined by one (1) of the following ASTM methods: D 129, D1552, D2622 OR D 4294, and
4. Method used to determine sulfur content.
5. A statement that the oil samples were obtained in accordance with either ASTM methods D4057 or D4177.

Any invoice that is not in the above format will be returned.

18. USE OF FUEL

Fuel sold under this contract will be used by state agencies, school districts, municipalities, volunteer fire companies and political subdivisions.

19. STORAGE TANK COMPLIANCE CERTIFICATION/DOCUMENTATION:

Agencies are advised that they shall **NOT** sign storage tank compliance certification or any other documentation they receive from the contractor(s). They are to fax a copy of all such items to the Contract Officer immediately upon receipt.

TECHNICAL SPECIFICATIONS

1. ULTRA LOW SULFUR DIESEL:

The quality of the Ultra Low Sulfur Diesel, offered by the bidder(s) for this Contract, shall be homogenous fuel oil, suitable for diesel engines, and it shall conform to the requirements of ASTM D975, or the latest revision thereof, except as listed differently elsewhere herein.

Below are the technical specifications which must be met for Ultra Low Sulfur Diesel supplied under this contract.

NOTE: All test references shall be ASTM method, as indicated herein, or approved equivalents.

Parameter	Test Method	Min	Max
Ash, wt %	D482		0.01
Carbon Residue: Ramsbottom on 10% btms	D524		0.35
Cetane Index	D976, D4737	40	
Cetane Number	D613	40	
Cloud Point, deg F	D2500, D5771, D5772, D5773		
-September 1 through March 31			15
-April 1 through August 31			20
Color, ASTM	D1500, D6045		2.5
Color, Visual		Undyed	
Copper Corrosion, 3 hrs @ 122 deg F	D130		1
Distillation: 90 % recovered, deg F	D86	540	640
Flash point, deg F	D93	125	
Haze Rating @ 77 deg F	D4176		2
Pour Point, deg F	D97, D5949, D5950, D5985		
-September 1 through March 31			0
-April 1 through August 31			10
Thermal stability, 90 minutes	D6468	70	
@ 302 deg F Reflection Pad Rating, %			
Total Sulfur, ppm (by weight)	D2622, D4294, D5453, D7039		15.0
Viscosity, cSt @ 104 F	D445	1.9	3.4
Water & Sediment, vol %	D1796, D2709		0.05

TECHNICAL SPECIFICATIONS

2. DELIVERY REQUIREMENTS/RESTRICTIONS:

Delivery of product shall be made by metered truck, be accompanied with a printed meter slip, which clearly indicates the quantity delivery, and be free from residues or contaminates from previous loads. Each agency shall make its own arrangement with the supplier with regard to how delivery tickets shall be handled.

The following information shall be supplied at the time of each delivery of product:

1. Name of supplier.
2. The type of fuel being delivered.
3. Percent of sulfur in fuel.
4. Method used to determine sulfur content.

All tanks, 5,000 gallon and over shall be filled by the submerged fill method and the contractor shall provide written certification at the time of delivery. Failure to provide the certification may result in the termination of the contract.

Submerged Filling: Filling of a tank truck or stationary tank through a pipe or hose whose discharge opening is entirely submerged when the liquid level is six inches above the bottom of the tank.

Deliveries to all Department of Transportation locations in New Castle, Kent and Sussex Counties will be made between the hours of 8:00 a.m., and 3:00 p.m., Monday through Friday, unless otherwise requested for emergencies.

Deliveries to the Division of Facilities Management buildings in New Castle, Kent and Sussex Counties will be made between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Delivery hours for ordering schools and agencies shall be from 7:00 a.m., to 5:00 p.m., Monday through Friday.

NOTE: If delivery is made on a weekday, and the weekday is a holiday, the price per gallon shall be based on the previous day.

3. ORDERING PROCEDURE:

Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, fax or computer on-line systems. Successful contractors are required to have either a local telephone number within the (302) area code, a toll free 800 number, or agree to accept collect calls. During the heating season contractors must make provisions for accepting orders on a 7 day per week/24 hour basis.

Order for product may be on a "will call" basis or an "automatic delivery" system may be set up. Automatic deliveries shall be established between the contractor and the ordering agency only after specific information regarding the account has been realized.

TECHNICAL SPECIFICATIONS

4. **MINIMUM DELIVERY:**

Minimum delivery shall not be less than 100 gallons into one (1) tank on tank wagon deliveries. The minimum order for Motor Transport Deliveries shall be 4,000 gallons. Purchasing of less than minimums qualify for contract pricing at the vendor's discretion, including tank top-offs for tank testing. However, in no case shall pricing exceed the contractor's normal retail pricing for purchasing of less than 100 gallons, regardless of delivery circumstances.

5. **DELIVERY RESPONSE REQUIREMENT:**

A. Normal Delivery - All deliveries shall be completed by the end of the day following the date of the verbally given order or the day after receiving a written purchase order. "End of the day" is defined as 5:00 p.m. **Agencies are responsible for obtaining samples of product from each tank prior to delivery into the facilities tank.**

B. Emergency Delivery - If an agency determines itself to be out of fuel or in an impending out of fuel condition, the ordering agency may "DECLARE AN EMERGENCY". Under those extreme conditions delivery must be made within eight (8) hours of the "DECLARATION".

C. Automatic Delivery - Keeping the tank filled shall be the responsibility of the contractor. It is expected that these accounts shall have the highest priority for service should they be allowed to reach an emergency situation.

Contractor(s) who repeatedly allow a tank on Automatic Delivery to run out of fuel shall be liable for all cost incurred for the repair of the tank and associated equipment. It may also result in the termination of their contract.

6. **LATE DELIVERY/VENDOR-AGENCY RESPONSIBILITIES:**

During the peak of the heating season situations arise that make it difficult to comply with the delivery response requirements. As soon as the contractor determines that the delivery will be late the following steps shall be taken:

A. Contractor shall contact the ordering agency and confirm a realistic delivery time. The agency must then determine if that is acceptable. If the projected delivery time is unacceptable then:

B. Contractor may select another distributor who is able to make the delivery on time. The ordering agency must then give permission to the contractor for this alternative. Contracted pricing and invoicing shall be the responsibility of our contracted vendor.

C. If the contractor fails to contact the ordering agency regarding a late delivery or if another distributor cannot be mutually secured in order to make an on time delivery, then the ordering agency may after it determines that a critical situation exists, place an order on the open market. In that situation the contractor shall pay the consequences as stated on page 8, paragraph No. 13 - Non-Performance.

TECHNICAL SPECIFICATIONS

6. **LATE DELIVERY/VENDOR-AGENCY RESPONSIBILITIES:** (Continued)

D. It shall be the responsibility of both the contractor and the ordering agency to establish a contact person and telephone number in order to handle late delivery situations.

These requirements are designed to help open communications between the agencies and the contractor. They are not designed to open the door for SUB-CONTRACTING deliveries.

7. **SPILLAGE:**

All spillages must be corrected on an immediate basis to the satisfaction of the ordering agency. All associated cost including materials and labor shall be borne by the contractor. Damage resulting from a spillage shall be the responsibility of the contractor. The contractor shall immediately notify the below listed office of all spillages:

Division of Air and Waste Management
24 hour Hotline
In State Phone No.: 800-662-8802
In/Out of State Phone No.: (302) 739-5072

8. **PRODUCT QUALITY/TESTING/LIABILITY:**

- A. Product sold to Agencies, School Districts and other facilities purchasing under the terms and conditions of this contract shall be tested according to the procedures and specifications outlined by ASTM designation D396, ASTM designation D975 or any subsequent revision. Additionally, ASTM D2622 will be used as the basis for enforcement of any Sulfur content violations.
- B. The purchasing facility shall obtain a sample of product from each tank truck prior to delivery into the facility's storage tank. Samples will be obtained and stored in a manner that precludes contamination by foreign substances.
- C. Periodically, retained product samples shall be submitted to an independent laboratory for testing according to the noted procedures and specifications. Samples will also be tested if changes in, or problems with burner or boiler operation or performance point to a specific need for confirmation of product quality.
- D. From time to time, at the direction of the Division of Facilities Management Energy Office, samples of product shall be obtained from Contractor's tank trucks. The samples obtained for the Energy Office will be subject to the tests and specifications noted in paragraph A. If product tested for the Energy Office fails to meet specifications, the contractor shall be subject to the same liabilities associated with the outcome of test performed for the purchasing agencies.

TECHNICAL SPECIFICATIONS

8. **PRODUCT QUALITY/TESTING/LIABILITY:** (Continued)

E. The contractor shall be liable if product fails to meet specification. Liability shall include, but is not limited to, the cost of burner or boiler service, materials, parts replacement, labor, the cost of property damage such as broken water lines and/or steam lines resulting from burner shut down and time lost due to building closure. Liability shall also include the cost of product remaining in the tank, storage tank.

F. If, during testing, it is determined that moisture and sediment and/or ash content exceed specifications limits (as a % of Weight), the contractor will credit the purchasing facility according to the following calculation.

$$\% \text{ Ash}^* + \% \text{ Moisture \& Sediment}^{**} \times \text{Purchase Quantity} \times \$ * \% \text{ Ash} = \text{Measured Ash}$$

(%Weight) - Maximum Allowable Ash (%Weight)

$$\% \text{ Moisture \& Sediment} = \text{Measured Moisture \& Sediment (\% Volume)} - \text{Maximum Allowable Moisture \& Sediment (\% Volume)}$$

G. The contractor will bear the cost of laboratory testing if samples fail to meet specifications.

H. In the event liabilities are assessed against the contractor, the purchasing agency may deduct the amount assessed from unpaid invoices prior to payment.